

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

CIVIL ACTION NO.

STATE FARM INSURANCE	)
COMPANIES AS THE SUBROGEE	)
OF ATTILA WENGER	)
AND MARIA SARMIENTO-WENGER	)
	)
Plaintiff,	)
v.	)
HEWLETT-PACKARD COMPANY,	)
	)
Defendant.	)

**DEFENDANT HEWLETT-PACKARD COMPANY'S  
ANSWER TO PLAINTIFF'S COMPLAINT**

The defendant, Hewlett-Packard Company, make this its answer and jury demand to plaintiff's complaint. Unless specifically answered herein, all allegations of the complaint are denied.

1. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiff to prove the same.
2. Admitted.
3. Admitted.
4. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiff to prove the same.
5. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiff to prove the same.
6. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiff to prove the same.
7. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of

this paragraph and calls upon the plaintiff to prove the same. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second sentence of this paragraph as it pertains to "said notebook."

8. The defendant can neither admit nor deny the allegations contained in the Complaint since such statements are legal conclusions
9. Denied.
10. Denied.
11. Denied.
12. Denied.
13. Denied.
14. Admitted. Further answering, the defendant denies it had any obligation to pay said sum.
15. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiff to prove the same.
16. Denied.

**AS AND FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANT**

17. The defendant incorporates herein by reference its answers to paragraphs 1-17 of the Complaint, and makes that its answer to this paragraph of the Complaint.
18. Denied.
19. Denied.
20. Denied.

**AS AND FOR A THIRD CAUSE OF ACTION AGAINST DEFENDANT**

21. The defendant incorporates herein by reference its answers to paragraphs 1-21 of the Complaint, and makes that its answer to this paragraph of the Complaint.
22. Denied.
23. Denied.

24. Denied.

25. Denied.

**AS AND FOR A FOURTH CAUSE OF ACTION AGAINST DEFENDANT**

26. The defendant incorporates herein by reference its answers to paragraphs 1-26 of the Complaint, and makes that its answer to this paragraph of the Complaint.

27. Denied.

28. Denied.

29. Denied.

WHEREFORE, the defendant says that Complaint against it should be dismissed and that judgment enter for the defendant, together with its costs.

**FIRST AFFIRMATIVE DEFENSE**

And further answering, defendant says that the acts complained of were not committed by a person for whose conduct defendant is legally responsible.

**SECOND AFFIRMATIVE DEFENSE**

And further answering, the defendant says that the product was not put into market with any defects and the product was fit for its intended purpose.

**THIRD AFFIRMATIVE DEFENSE**

And further answering, defendant says that the complaint should be dismissed pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted.

**FOURTH AFFIRMATIVE DEFENSE**

And further answering, defendant says that plaintiffs' recovery, if any, must be diminished in accordance with the proportion of negligence that is attributable to plaintiffs.

**FIFTH AFFIRMATIVE DEFENSE**

And further answering, defendant says that plaintiffs did not exercise reasonable care in using the product in question.

SIXTH AFFIRMATIVE DEFENSE

And further answering, defendant says that the warranties claimed did not arise under the contract alleged in the complaint.

SEVENTH AFFIRMATIVE DEFENSE

And further answering, defendant says that it did not receive proper notice of the alleged breach of warranties was given to defendant as required by law, and defendant was thereby prejudiced.

EIGHTH AFFIRMATIVE DEFENSE

And further answering, defendant says that it has performed and fulfilled all promises and obligations arising under all applicable warranties and, that, therefore plaintiffs are barred from recovery.

NINTH AFFIRMATIVE DEFENSE

And further answering, defendant says that it denies liability for any implied warranty of merchantability, since all goods allegedly sold by defendant to plaintiffs were fit for the ordinary purposes for which such goods were intended and/or used.

TENTH AFFIRMATIVE DEFENSE

And further answering, defendant says that it has conformed to all promises or affirmations of fact made on the container label, if any, and that therefore plaintiff is barred from recovery.

ELEVENTH AFFIRMATIVE DEFENSE

And further answering, the defendant states that any alleged act or omission by the defendant was not a substantial factor in causing the plaintiff's alleged damages.

TWELFTH AFFIRMATIVE DEFENSE

And further answering, the defendant says that to the extent that it had any obligations to the plaintiff, such obligations have been fully, completely and properly performed in every respect.

THIRTEENTH AFFIRMATIVE DEFENSE

And further answering, the defendant says that no privity of contract exists between it and the plaintiff, wherefore the plaintiff is barred from recovery in this action.

FOURTEENTH AFFIRMATIVE DEFENSE

And further answering, the defendant says that the plaintiff has failed to take reasonable and prudent measures necessary and proper to mitigate whatever damages it might have sustained as a result of the acts or omissions complained of in the plaintiff's complaint.

FIFTEENTH AFFIRMATIVE DEFENSE

And further answering, the defendant says that if the defendant is found liable, such liability is less than or equal to 50% of the total liability of all persons who may be found liable and, therefore, this answering defendant's liability shall be limited to its equitable share, pursuant to CPLR Article 16, section 1601.

JURY DEMAND

The defendant, Hewlett-Packard Company, hereby makes a demand for trial by jury on all claims.

Respectfully Submitted,  
HEWLETT-PACKARD CO.,

/S/ Andrew R. Ferguson

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Andrew R. Ferguson, Esq.  
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Certificate of Service

I, Andrew R. Ferguson, do hereby certify that on this 3rd day of June, 2008, I served a copy of the within document electronically and via first class mail, postage prepaid to: Brianne M. Carbonaro, Esq. (bcarbonaro@apclegal.com), Ali, Pappas & Cox, P.C., 614 James Street, Suite 100, Syracuse, New York 13203.

/S/ Andrew R. Ferguson

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Andrew R. Ferguson, Esq.